

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR MORRISON COUNTY**

In the Matter of:
The Non-renewal of the Liquor License of
Gordon K. Wheeler, Sr., d/b/a the Camp Store/Bar/Cafe

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson, acting for the Morrison County Board (the County Board), conducted a hearing in this matter on September 21, 2005, beginning at 10:00 a.m., at the Morrison County Courthouse, 213 SE 1st Avenue, Little Falls, Minnesota. The hearing was held pursuant to an Amended Notice of Hearing dated August 19, 2005. The OAH hearing record closed on November 2, 2005, when all of the parties' post-hearing memoranda were received.

Todd L. Kosovich, Assistant Morrison County Attorney, Government Center, 213 SE 1st Avenue, Little Falls, Minnesota 56345-3196, appeared on behalf of Morrison County (the "County"). Randall D. B. Tigue, Attorney at Law, 3960 Minnehaha Avenue South, Minneapolis, Minnesota 55406 appeared on behalf of the Respondent. Gordon K. Wheeler, Sr., doing business as the Camp Store/Bar/Café (the "Licensee" or "Mr. Wheeler").

NOTICE

This Report contains a recommendation and not a final decision. The final decision will be made by the Morrison County Board, which may affirm, reject, or modify the Findings and Conclusions contained herein. The County Board will consider the evidence in this case and these recommended Findings of Fact and Conclusions, but will not consider any factual testimony not previously submitted to and considered by the Administrative Law Judge. Under the Minnesota Administrative Procedure Act,¹ the County Board will not make its final decision until after it has provided the Licensee an

¹ Minnesota Statutes, section 14.62 (2000). (In the Amended Notice of Hearing, the County Board directed that this proceeding be conducted in accordance with the provisions of the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14, and the contested case rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.5100 through 1400.8500.)

opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or interpretation of the facts and to present argument related to the recommended adverse action. Parties should contact Tim Houle, County Administrator, 213 SE 1st Avenue, Little Falls, MN 56345, telephone: 320-632-2941, to find out how to file objections or present argument.

STATEMENT OF THE ISSUE

Whether or not the County should grant Mr. Wheeler's application for renewal of a liquor license covering the Camp Bar and associated portions of his business complex?²

SUMMARY

The County established by a preponderance of the evidence that prostitution has been occurring on Mr. Wheeler's licensed premises and that, at a minimum, he either knew or reasonably should have known that it was occurring there. The evidence therefore established that Mr. Wheeler has been operating the licensed premises in a way that is detrimental to the public good. The County Board should therefore deny Mr. Wheeler's application for renewal of his liquor license.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background

1. The County is a political subdivision of the State, and its governing body is the County Board. The State has delegated to the City authority to issue licenses for the sale of alcoholic beverages.³

2. Mr. Wheeler is the owner of a complex of adjoining buildings and businesses, which he operates under the trade name Camp Ripley Store/Bar/Café. The address of the complex is 15041 Highway 115, Little Falls, MN 56345, and it is located in rural Morrison County at the intersection of Highway 115 and County Road 213 immediately outside the main gate of the Camp Ripley Military Reservation.⁴

3. Mr. Wheeler's business complex consists of six interconnected buildings housing several business enterprises. Starting at the western end of the complex, those business enterprises include a store and café,⁵ an off-sale bottle shop,⁶ a

² See Findings of Fact No. 4.

³ Minnesota Statutes, sections 340A.401 through 340A.415.

⁴ Testimony of Michel Wetzel; Exhibit 34.

⁵ Identified as Building "A" on Exhibit 1.

⁶ Identified as Building "B" on Exhibit 1.

changing room for dancers and three to four other separate rooms identified as “VIP studios,”⁷ a main bar building commonly known as the “Camp Bar,”⁸ another liquor lounge commonly known as the “Krazy Rabbit,”⁹ and a corridor linking the Camp Bar with the Krazy Rabbit.¹⁰

4. Sometime prior to June 30, 2005, the County issued two liquor licenses to Mr. Wheeler for the businesses he has been operating in the complex. One such license covered sales on the premises of the Camp Bar, off sales at the bottle shop, and Sunday sales. That license expired by its original terms on June 30, 2005, and is the subject of this proceeding.¹¹ The County Board subsequently renewed that license for two successive ninety-day periods pending the outcome of this proceeding. That license currently expires on December 31, 2005. The County has also issued Mr. Wheeler a second liquor license for the Krazy Rabbit, but that license is not in dispute in this proceeding.¹²

The Camp Bar

5. Mr. Wheeler operates the part of his business known as the Camp Bar in a segment of the building complex that is located approximately in the center of the structure.¹³ Access to the Camp Bar from the outside is on the main floor and through a door on the north side. Inside and on the main floor, the Camp Bar consists of a large open room used as a bar area, with a smaller enclosed bookstore located in the northeast corner of that room.¹⁴ A large, rectangular, horseshoe-shaped bar, which faces the west wall, is located in the middle of the main room. There is access to the interior of the bar on its northwest corner.¹⁵ On and beneath the bar at that corner are surveillance monitors and equipment.¹⁶ When the Camp Bar is open in the evenings, Mr. Wheeler customarily positions himself at or near that surveillance station.¹⁷ There is no stage or other area for dancing on the main floor of the Camp Bar.

6. Along the north wall of the main floor of the Camp Bar, there is a stairway leading down to basement rooms.¹⁸ The opening on the main floor at the head of those stairs faces the surveillance station at the northwest corner of the bar.¹⁹

⁷ Identified as Building “F” on Exhibit 1; see also Exhibit 27.

⁸ Identified as Building “C” on Exhibit 1.

⁹ Identified as Building “D” on Exhibit 1.

¹⁰ Identified as Building “E” on Exhibit 1.

¹¹ Exhibit 34.

¹² Post Hearing Memorandum of Morrison County at p. 1.

¹³ For ease of reference, the term “Camp Bar” will hereafter refer to both the main and basement floors of the segment of the complex identified as Building “C” on Exhibit 1.

¹⁴ Building “C” on Exhibit 1.

¹⁵ Exhibits 1, 6, 8, and 9; testimony of Michel Wetzel.

¹⁶ Exhibit 7; testimony of Michel Wetzel.

¹⁷ Testimony of Michel Wetzel and Matthew Wente.

¹⁸ Exhibits 1 and 12; testimony of Michel Wetzel.

7. The basement of the Camp Bar consists of a large open room and a somewhat smaller separate room. In the larger room, there is a small bar and a raised, rectangular stage, with chairs positioned around it. Topless dancing is performed on the stage in the larger basement room.²⁰

8. There is another small bar and raised rectangular stage in the smaller room in the basement of the Camp Bar.²¹ In addition to chairs positioned around the stage, there are rows of couches along some of the walls of that smaller room.²² Nude dancing is performed on the stage in the smaller basement room. The dancing performed there also includes lap or couch dancing with customers seated on the adjoining chairs or on the couches along the walls of that room.²³ Customers are able to purchase couch dances from the dancers lasting for one musical number for a charge ranging from \$20.00 to \$50.00.²⁴

9. Immediately to the west of the building segment containing the Camp Bar is another building segment that connects on the main floor to the Camp Bar to the east and to building segments housing the bottle shop and to the store and café to the northwest.²⁵ That connecting segment has no basement. The connecting segment contains a changing room for dancers and three or four small, private 8' by 8' rooms that signs identify as "VIP studios" (VIP rooms).²⁶ Access to the VIP rooms from the Camp Bar is through a doorway in the west wall of the Camp Bar immediately adjacent to the surveillance station at the northwest corner of the bar.²⁷

10. There are no windows in the VIP rooms, and the doors may be closed for privacy. They are each furnished with couches that can be converted into beds. The rooms also contain a small chair, an end table and lamp, a fan, air cleaner, and portable radio and CD player. Each VIP room also has a video camera mounted on a wall near the ceiling.²⁸

11. Customers pay no cover charge to patronize the bar on the main floor of the Camp Bar. However, when dancing is in progress in the basement rooms, customers normally must pay a \$5.00 cover charge to gain access to the larger basement room where topless dancing is performed, and they normally must pay a \$15.00 cover charge to gain access to the smaller basement room where nude dancing is performed.²⁹ The cover charges are normally collected by Mr. Wheeler at the

¹⁹ Exhibits 1 and 8; testimony of Michel Wetzel.

²⁰ Exhibits 11, 13, and 14; testimony of Michel Wetzel and Matthew Wente.

²¹ Exhibits 15 and 16; testimony of Michel Wetzel.

²² Exhibit 17; testimony of Michel Wetzel.

²³ Exhibits 11, 13, and 14; testimony of Michel Wetzel and Matthew Wente.

²⁴ Testimony of Michel Wetzel.

²⁵ Building "F" on Exhibit 1; testimony of Michel Wetzel.

²⁶ Exhibits 1, 18-23, 26, and 27; testimony of Michel Wetzel and Matthew Wente.

²⁷ Exhibit 1 and 10; testimony of Michel Wetzel and Matthew Wente.

²⁸ Exhibit 19; testimony of Matthew Wente.

²⁹ Testimony of Michel Wetzel.

surveillance station at the northwest corner of the bar on the main floor before customers are permitted to descend the stairs leading to the basement rooms.³⁰ Similarly, customers desiring to use one of the VIP studio rooms in the building segment next to the Camp Bar must pay Mr. Wheeler a \$75.00 fee for the use of the studio room before Mr. Wheeler permits them to go through the doorway in the west wall that leads to those rooms.³¹ The VIP rooms are located in a portion of the building complex that is licensed to sell liquor under the liquor license that also covers the Camp Bar.³²

The Investigation

12. Mr. Wheeler has operated the Camp Bar as an adult entertainment facility since at least 1983, and no prostitution arrests occurred on the premises prior to March 2005. In November 2004, the County Sheriff's Office received complaints about possible acts of prostitution occurring on the premises of Mr. Wheeler's business complex.³³

13. Prior to the events at issue, there were only a couple of reports of prostitution in Morrison County, none of which resulted in criminal prosecution. The County Sheriff's Office does not have its own vice unit. Consequently, when the Sheriff's Office received complaints of prostitution at the Camp Bar, Sheriff Michel Wetzel sought investigative assistance from the Minneapolis Police Department. That Department subsequently provided the County with the assistance of Officer Matthew Wenthe and other Minneapolis police officers to assist in an investigation about the complaints that had been made about the Camp Bar.³⁴

14. After contacting Sheriff Wetzel, Officer Wenthe consulted a website named "Strip Club List." That website makes itself available for patrons of adult entertainment complexes to post comments about their experiences at those facilities. Based on the comments that Officer Wenthe saw on that website posted by persons stating that they had patronized the Camp Bar, Officer Wenthe recommended to Sheriff Wetzel that an undercover investigation be conducted to determine whether prostitution was taking place there.³⁵

15. On the evening of March 31, 2005, Officer Wenthe began his undercover investigation with an initial reconnaissance visit to the Camp Bar. When Officer Wenthe first entered the premises, he saw Mr. Wheeler standing just inside the main door on the

³⁰ Testimony of Michel Wetzel and Matthew Wenthe.

³¹ *Id.*

³² Testimony of Michel Wetzel.

³³ *Id.*

³⁴ Testimony of Michel Wetzel and Matthew Wenthe.

³⁵ Exhibit 34; testimony of Matthew Wenthe. Exhibit 34 is a printout of the customer comments that Officer Wenthe observed on the website. It was not received in evidence to establish the truth of any of those comments but only for the limited purpose of establishing the reason for conducting the subsequent undercover investigation.

main floor where he could make contact with persons descending the stairs to the basement or entering the building segment where the VIP studios are located.³⁶

16. Once inside the Camp Bar, Officer Wenté approached Mr. Wheeler and inquired about the cover charge for patronizing the adult entertainment activities in the basement. Mr. Wheeler informed him that the cover charge was \$15.00 that evening. Officer Wenté then paid \$15.00 to Mr. Wheeler, who, in turn stamped Officer Wenté's hand. Officer Wenté then proceeded down the stairs to the basement rooms.³⁷ In the basement room, Officer Wenté observed about twenty to twenty-five customers who were being entertained by about eight to eleven dancers. One dancer would be performing on the stage at a time. While a dancer was performing, the other dancers were scattered around the room talking to customers.³⁸

17. About 40 to 45 seconds after entering the basement room, Officer Wenté was approached by a young woman, who identified herself as Tasha. Tasha told Officer Wenté that for \$275.00, he could accompany her to one of the VIP rooms upstairs where she would engage in sexual intercourse with him or perform oral sex on him for half an hour. Officer Wenté did not accept Tasha's proposal, but rather continued to observe the other activities in the room.³⁹

18. While at the Camp Bar on the evening of March 31, 2005, Officer Wenté had another discussion with a young woman who identified herself as Brandy. Officer Wenté purchased a couch dance from Brandy, and afterward they had a conversation about the use of the VIP rooms upstairs. Brandy indicated to Officer Wenté that he would have to pay Mr. Wheeler \$75.00 for the use of the room and then could negotiate with her for any services that she would perform. Brandy indicated that for \$150.00 to \$200.00, she would make Officer Wenté "feel real good." Officer Wenté then asked her if that was "full service," which is jargon for persons involved in prostitution for intercourse and oral sex in one session. Brandy informed Officer Wenté that the price quoted was for full service.⁴⁰ In the course of their conversation, Brandy also told Officer Wenté that Mr. Wheeler had removed the camera from the room so that "anything goes."⁴¹

19. Based on what Officer Wenté observed and heard at the Camp Bar on the evening of March 31, 2005, he recommended that Sheriff Wetzel continue the undercover operation by scheduling another undercover investigation at the establishment.⁴²

³⁶ *Id.*

³⁷ Testimony of Matthew Wenté.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

20. On April 14, 2005, the Morrison County District Court issued a search warrant to Sheriff Wetzel and officers under his direction to search the premises of the Camp Bar.⁴³

21. On the evening of April 15, 2005, at approximately 10:15 p.m., a team of officers from the vice squad of the Minneapolis Police Department conducted an undercover prostitution investigation at the Camp Bar. Sergeant Jeff Jindra and Officers Wentz and Darren Blauert went into the bar under cover. They all were provided with money for the operation, and both Sergeant Jindra and Officer Wentz were equipped with audio recording devices. Two other officers remained outside to monitor the recording devices.⁴⁴

22. The plan for the operation was for Officer Wentz and Sergeant Jindra to enter the Camp Bar, pay the cover charge to go down to the basement, once there, to make contact with the dancers, and to determine whether any illegal activities were being conducted.⁴⁵

23. When Officer Wentz and his colleagues entered the Camp Bar, they saw Mr. Wheeler sitting at the surveillance station at the northwest corner of the bar—again, a place where he could make contact with persons descending the stairs to the basement or entering the building segment where the VIP rooms were located.⁴⁶ Mr. Wheeler indicated that the cover charge for patronizing the basement that night was \$15.00 apiece. Officer Wentz paid the cover charge for all three of them, and they proceeded down the stairs and into the larger basement room where dancers were performing on the stage.⁴⁷

24. While in the basement adult entertainment facility, Officer Wentz purchased a lap dance from a dancer who identified herself as Krissa. After the lap dance, Officer Wentz asked Krissa if she had a friend who could provide services for Officer Blauert if they all went to the VIP rooms. Krissa suggested that she accompany Officer Wentz to a VIP room and that her sister, Amy, accompany Officer Blauert to a VIP room. Krissa replied that the charge for the services that she and her sister would be providing would be \$375.00 apiece, with \$75.00 of each charge going to Mr. Wheeler for the use of the rooms.⁴⁸

25. Thereafter, Officers Wentz and Blauert, accompanied by Krissa and Amy, ascended the stairs from the basement to the main floor of the Camp Bar. Once there, they proceeded toward the VIP rooms in the adjacent structure. On their way, they had to pass the surveillance station where Mr. Wheeler was standing. Officer Wentz stopped there and offered to pay Mr. Wheeler \$75.00 each for the two VIP rooms, but

⁴³ Exhibit A. to the Affidavit of Randall D. B. Tigue dated June 29, 2005.

⁴⁴ Officers Greg Knoll and Steve Bantle.

⁴⁵ Testimony of Matthew Wentz.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

Mr. Wheeler indicated that they needed to pay the \$75.00 to the two dancers and that they would pay him the \$75.00 charges later.⁴⁹

26. When the officers and dancers arrived at the VIP rooms, Officer Wentz arranged for Officer Blauert to have sexual contact with Amy for \$375.00, with \$75.00 of that sum going to Mr. Wheeler for the use of the room. The sexual contact that Officer Wentz paid for on Officer Blauert's behalf was a massage and oral sex administered to him by Amy. Amy agreed to that proposal and then led Officer Blauert into a VIP room and closed the door.⁵⁰

27. Officer Wentz then entered another VIP room with Krissa and closed the door. While there, Krissa offered to provide Officer Wentz with a massage and oral sex for \$375.00, with \$75.00 of that sum going to Mr. Wheeler for the use of the room. Officer Wentz accepted the offer, and Krissa began to disrobe. At that point, Officer Wentz indicated to the officers who were monitoring his audio recording equipment that the investigation was completed.⁵¹

28. Shortly thereafter, Sheriff Wetzel and officers under his supervision entered the Camp Bar, executed the search warrant, and made arrests on the premises.⁵²

29. While on the premises of the Camp Bar and adjacent structures on the evening of March 31, 2005, Sheriff Wetzel observed a used condom in a waste receptacle in one of the VIP rooms. He also observed a camera fastened to the wall of a VIP room, with the camera's lens aimed at the ceiling.⁵³

Procedural Findings

30. On June 29, 2005, the County issued a Notice of and Order for Hearing, and on the following day the County served that notice by mail upon Mr. Wheeler at both his home and business addresses. That notice scheduled a hearing in this matter for August 16, 2005, at the Morrison County Courthouse in Little Falls.

31. On August 4, 2005, Mr. Wheeler submitted and served a motion to dismiss this proceeding or, in the alternative, to stay further proceedings pending resolution of certain criminal proceedings in Morrison County District Court.

32. By order entered on August 12, 2005, the Administrative Law Judge rescheduled the hearing in this matter for September 21, 2005, at 10:00 a.m., again at the Morrison County Courthouse.

⁴⁹ Testimony of Matthew Wentz.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Exhibit A. to the Affidavit of Randall D. B. Tigue dated June 29, 2005; testimony of Bruce Motes.

⁵³ Testimony of Leslie Wetzel.

33. On August 19, 2005, the County issued an Amended Notice of and Order for Hearing and served it upon Mr. Wheeler.

34. On September 2, 2005, the Administrative Law Judge entered an order denying Mr. Wheeler's motion to dismiss this proceeding and also denying the motion to stay further proceedings.

35. On September 9, 2005, Mr. Wheeler submitted and served a motion in limine and also a motion to dismiss and suppress certain evidence. The Administrative Law Judge conducted a telephone hearing on those motions on September 20, 2005. At the close of that telephone hearing, the Administrative Law Judge granted Mr. Wheeler's motion in limine.⁵⁴ However, conditioned on certain assurances by counsel for the County as to what evidence the County would be introducing at the hearing, the Administrative Law Judge granted Mr. Wheeler's motion to suppress.

36. On September 16, 2005, the County issued a second Amended Notice of Hearing.

37. The Administrative Law Judge conducted the hearing in this matter beginning at 10:00 a.m. on Wednesday, September 21, 2005. Both at the beginning and at the end of the hearing, Mr. Wheeler renewed his motion to stay proceedings in this matter pending completion of the ongoing criminal proceedings. The Administrative Law Judge denied that motion when made at the beginning of the hearing and took it under advisement when it was made at the end of the hearing.

Other Findings

38. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

39. The Memorandum that follows explains the reasons for these Findings, and, to the extent that it may set out any findings of fact, the Administrative Law Judge incorporates that Memorandum into these Findings.

40. The Administrative Law Judge adopts as Findings any Conclusions, which are more appropriately described as Findings.

Based upon the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

⁵⁴ The ALJ's rulings on those motions were not memorialized in a written order; however, the ALJ read those rulings into the record at the beginning of the hearing on September 21, 2005.

1. The Administrative Law Judge and the Morrison County Board have authority to conduct this proceeding and to make recommendations or orders, as the case may be, relating to whether Mr. Wheeler's liquor license for the Camp Bar and associated premises should be renewed pursuant to Minn. Stat. § 340A.412, subd. 2.

2. The County has complied with all relevant procedural requirements, and this matter is properly before the Administrative Law Judge.

3. Mr. Wheeler received adequate and timely notice of the hearing and of the allegations supporting the County's proposed action.

4. The County Board has specified that the provisions of Chapters 14 and 340A of Minnesota Statutes and Minnesota Rules parts 1400.5100 to 1400.8500 govern the conduct of the hearing in this matter.

5. Minnesota law provides:

... [A comprehensive background and investigation of the applicant] may be required prior to renewal of an existing on-sale license when the governing body of the city or county deems it in the public interest.⁵⁵

* * *

No license may be issued, transferred, or renewed if the results of the investigation show, to the satisfaction of the governing body, that issuance, transfer, or renewal would not be in the public interest.⁵⁶

6. Minn. Stat. § 609.324, subd. 2, provides, in part:

Subd. 2. Solicitation or acceptance of solicitation to engage in prostitution; penalty. Whoever solicits or accepts a solicitation to engage for hire in sexual penetration or sexual contact while in a public place may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000 or both.

Minn. Stat. § 609.321, subd. 9, defines "prostitution" as "engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact." "Sexual penetration is defined in Minn. Stat. § 609.321, subd. 11, as:

... any of the following acts, if for the purpose of satisfying sexual impulses: sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of an individual's body by any part of another individual's body or any object used for the purpose of satisfying sexual impulses. Emission of semen is not necessary.

⁵⁵ Minn. Stat. § 340A.412, subd. 2(a)

⁵⁶ Minn. Stat. § 340A.412, subd. 2(b).

7. The County established by a preponderance of the evidence that on the evening of March 31, 2005, dancers on premises covered by the Camp Bar's liquor license engaged in acts of prostitution there in violation of Minn. Stat. § 609.324, subd. 2.

8. The County established by a preponderance of the evidence that on the evening of April 15, 2005, dancers on premises covered by the Camp Bar's liquor license engaged in acts of prostitution there in violation of Minn. Stat. § 609.324, subd. 2.

9. The County established by a preponderance of the evidence that Mr. Wheeler knew, or should have known that acts of prostitution were occurring on the premises covered by his liquor license.

10. The County therefore established by a preponderance of the evidence that Mr. Wheeler's business operations at the Camp Bar and associated premises will not promote the public interest but rather will be detrimental to the public good.

11. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

12. The Memorandum that follows explains the reasons for these Conclusions, and to that extent, the Administrative Law Judge incorporates that Memorandum into these Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that Morrison County DENY Mr. Wheeler's application for renewal of his liquor license for the Camp Bar and associated premises.

Dated this 4th day of November 2005.

s/BRUCE H. JOHNSON

BRUCE H. JOHNSON

Administrative Law Judge

Recorded: four tapes – no transcript prepared.

NOTICE

Under the Minnesota Administrative Procedure Act,⁵⁷ the County Board must serve its final decision in this matter upon each party and the Administrative Law Judge by first-class mail.

⁵⁷ Minnesota Statutes section 14.62, subdivision 1.

MEMORANDUM

I.

A Preponderance of the Evidence Established That Prostitution Has Been Occurring at Mr. Wheeler's Establishment

Officer Wentz testified that within forty-five seconds of his arrival in the adult entertainment center in the basement of the Camp Bar on March 31, 2005, a dancer, who identified herself as Tasha, offered to engage for hire in an act of prostitution with him.⁵⁸ He further testified that on April 15, 2004, dancers, who identified themselves as Krissa and Amy, made similar offers to him and his partner, Officer Blauert, and that they proceeded to one of the VIP rooms, where at least one of the dancers began making preparations to engage in acts of prostitution.⁵⁹ On the latter occasion, Officers Wentz and Blauert were equipped with audio recording devices, which were being monitored by other officers outside the building.

Mr. Wheeler argues that the audio recordings, and not Officer Wentz's testimony, are the best evidence of any conversations that occurred. He goes on to argue that the County's failure to place the recordings into evidence justifies an inference that the records, if produced, would have been unfavorable to the County.⁶⁰ In essence, Mr. Wheeler seems to be arguing an application of the best evidence rule. But in *Buffalo Insurance Company v. United Parking Stations, Inc.*,⁶¹ the Minnesota Supreme Court rejected such application of that rule:

In connection with the so-called best-evidence rule, there are some cases in which the broad statement is made that a party must produce the best evidence of which the case is susceptible. This appears to be true only in regard to the contents of writings. The present "best-evidence" rule is merely a name for the rule which requires the contents of a writing to be proved by the writing itself if it is available. It is not a broad, general principle applicable throughout the law of evidence. A party is not required to produce the best, in the sense of the most trustworthy and credible, evidence at his command. * * * A party is compelled to produce the best evidence at his command only in one class of cases. If he wishes to prove the contents of a writing he must do so by producing the writing itself." [Citation omitted.]

In this case, the County presented the oral testimony of a police officer who was a party to the conversations and made him available for cross-examination. Minn. Stat. § 14.60, subd. 1, sets forth the standard for admissibility of evidence in administrative hearings governed by Minn. Stat. Ch. 14:

⁵⁸ See Finding 16.

⁵⁹ See Findings 24 through 27.

⁶⁰ Respondent's Post-hearing Memorandum at pp. 5-6.

⁶¹ 152 N.W.2d 81 (Minn. 1967).

Admissibility. In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial and repetitious evidence.

The findings that acts of prostitution occurred at the Camp Bar and associated premises on at least two occasions were based on the testimony of Officer Wente, who was available for cross examination about any nuances in his conversations with the dancers who committed those acts. That evidence not only meets the standard of admissibility established by Minn. Stat. § 14.60, subd. 1, it is evidence that would have been admissible in a district court case pursuant to the Minnesota Rules of Evidence.⁶² The ALJ therefore concludes that the evidence presented by the County at the hearing was sufficient to establish by a preponderance of the evidence that acts of prostitution occurred on Mr. Wheeler's premises on at least two occasions.⁶³

II. The Public Interest Disfavors Renewing Mr. Wheeler's Liquor License

The authority to regulate the sale of alcoholic beverages within the state, including granting licenses to sell them, resides in the first instance with the legislature.⁶⁴ But in Minnesota Statutes, Chapter 340A, the legislature delegated the authority and discretion to grant liquor license applications and renewal applications to political subdivisions, such as the County. But when it did so, it placed a number of statutory limitations on that authority and discretion, among which was the requirement that

[n]o license may be issued, transferred, or renewed if the results of the investigation show, to the satisfaction of the governing body, that issuance, transfer, or renewal would *not be in the public interest*.⁶⁵
[Emphasis supplied.]

Put another way, under Minnesota law no one has a right to receive a license to sell alcoholic beverages or to have one renewed once it has expired by its own terms.

⁶² See Minn. R. Evid. 804(b)(3). See also *Sabes v. City of Minneapolis*, 120 N.W.2d 871 (Minn. 1963). Like this case, *Sabes* involved revocation of a liquor license because acts of prostitution were occurring on the premises. However, rather than the live testimony presented here, the city in that case merely offered written police reports to establish the existence of prostitution. The Court held that those written reports were a sufficient evidentiary basis to support the license revocation. 120 N.W.2d at 875-878.

⁶³ In the County's Post Hearing Memorandum (at p. 6), it states that further acts of prostitution occurred on the premises on August 25, 2005. However, no evidence relating to any such events was introduced into the hearing record, and the ALJ therefore made no findings of fact relating to those allegations and is not relying on those allegations in making recommendations to the County Board.

⁶⁴ *Paron v. City of Shakopee*, 32 N.W.2d 603, 606 (Minn. 1948).

⁶⁵ Minn. Statutes, section 340A.412, subdivision 1(b).

Whether to grant or renew a liquor license “rests in the sound discretion” of the licensing authority.⁶⁶ However, that discretion is not unlimited. On the one hand, rejection by the County of an application for a liquor license or renewal of one cannot be “arbitrary and capricious”—that is, it must be the result of a process “of examination and consideration . . . and not a mere expression of personal will.”⁶⁷ On the other hand, before issuing a license or renewal, the County has an affirmative duty to ensure that the business operations of the license will promote the public interest and will not be “detrimental to the public good.”⁶⁸

Consequently, it is the County Board’s duty to decide whether unlawful conduct has been occurring on the licensed premises and, therefore, whether renewal of Mr. Wheeler’s liquor license will be detrimental to the public good. In its amended Notice of Hearing, the County alleged, among other things, that Mr. Wheeler himself violated the state criminal laws relating to prostitution. Mr. Wheeler argues that there is insufficient evidence to establish that he committed any crime related to prostitution. The standard of proof in this proceeding is the “preponderance of evidence” standard and not the “beyond a reasonable doubt standard” that applies to criminal cases.⁶⁹ However, for the reasons set forth below, the ALJ finds it unnecessary to determine whether or not Mr. Wheeler has violated any prostitution laws.

A preponderance of the evidence established that acts of prostitution have been occurring on the licensed premises. Like this case, *Sabes v. City of Minneapolis*⁷⁰ involved adverse action against a liquor license on the grounds that prostitution was occurring on the premises. Unlike this case, *Sabes* involved no allegations that staff of the establishment or the licensee were directly involved in prostitution. Rather, the city only established that prostitutes frequented the establishment and plied their trade there. Like here, the licensee in *Sabes* claimed to have no direct knowledge that prostitution his premises.⁷¹ The Minnesota Supreme Court held that the city was justified in revoking the liquor license under those circumstances, and in so doing quoted a New Jersey court which had held that “[w]e would have to be naive to believe that these women could have solicited on the premises without anyone connected with management learning of it.”⁷² If anything, the facts of this case are more compelling than those in *Sabes*. The persons performing the acts of prostitution on Mr. Wheeler’s premises were dancers whom he had engaged to entertain his customers; they were not merely prostitutes who had entered his establishment as customers for the purpose of soliciting other customers. Furthermore, circumstantial evidence established that Mr. Wheeler either knew or should have known that acts of prostitution were occurring in VIP rooms *on his premises*. Although the rooms were equipped with surveillance

⁶⁶ *Paron v. City of Shakopee*, 32 N.W.2d 603, 609 (Minn. 1948); see also *Bourbon Bar & Café v. City of St. Paul*, 466 N.W.2d 438, 440 (Minn.App. 1991).

⁶⁷ *Id.* at 610.

⁶⁸ *Sabes v. City of Minneapolis*, 120 N.W.2d 871, 875 (Minn. 1963).

⁶⁹ See Minn. R. pt. 1400.7300, subp. 5.

⁷⁰ 120 N.W.2d 871 (Minn. 1963).

⁷¹ 120 N.W.2d at 878.

⁷² *Id.*, quoting *Benedetti v. Board of Commrs.*, 35 N.J. Super. 30, 34 113 A.2d 44, 46.

cameras, the lens of at least one was aimed at the ceiling so that Mr. Wheeler could not have seen what was occurring on the rooms on the monitors at his surveillance station. There was further evidence that Mr. Wheeler told one of his dancers that “what goes on [in the VIP rooms] stays there,”⁷³ and that evidence indicates that he at least suspected that prostitution was occurring in those rooms. There was also evidence that there were used condoms in the trash containers in the VIP rooms.⁷⁴ In Minn. Stat. § 340A.501, the legislature defined Mr. Wheeler’s duty under these circumstances by providing that “[e]very licensee is responsible for the conduct in the licensed establishment ...” And in *Sabes* the Minnesota Supreme Court interpreted that statutory responsibility to mean that a liquor licensee cannot turn his eyes from or choose to be ignorant of prostitution that is occurring openly on licensed premises.⁷⁵

III. The Public Interest Disfavors Renewing Mr. Wheeler’s Liquor License

At the close of the hearing, Mr. Wheeler also renewed his motion to stay further proceedings in this matter pending completion of certain ongoing criminal proceedings in which he is involved in Morrison County District Court. He argues that this matter and the pending criminal case overlap and involve identical allegations, thus raising concerns about implication of his Fifth Amendment rights. By order entered on September 2, 2005, the ALJ denied a similar motion that was filed prior to the hearing. At that time, the ALJ concluded that the issues to be adjudicated in this proceeding and in the pending criminal proceeding are not identical. Rather, it was more a matter that some of the same evidence might be tendered in both proceedings. In so ruling, the ALJ noted that there is no constitutional right to have civil proceedings stayed pending the outcome of a criminal proceeding, and that the decision whether to grant a stay involves balancing the competing needs of the parties, taking into account, among other things, the interest of the courts, the probability that proceeding will work a constitutional violation on the movant, the presence or absence of hardship or inequity, and the burden of proof.⁷⁶ At this stage of this proceeding, the balance weighs even more heavily against a stay. As indicated in this report, the ALJ has concluded that a preponderance of the evidence established that prostitution was occurring in the licensed premises, and that at a minimum Mr. Wheeler either knew or reasonably should have known that it was occurring. In other words, the public interest would not favor renewal of his liquor license even if one were to conclude that he himself was not directly involved in that illegal activity. Thus, this proceeding will have little impact on Mr. Wheeler’s Fifth Amendment rights. On the other hand, as the Minnesota Court of

⁷³ Testimony of Bruce Motes.

⁷⁴ The openness and blatancy of the prostitution activity on the premises of the Camp Bar is illustrated by the fact that Officer Wentz received a solicitation to engage in prostitution within 45 seconds of arriving in the adult entertainment area of the bar’s basement on March 31, 2005.

⁷⁵ In *Sabes*, the Court interpreted and relied on Minn. Stat. § 340.14, subd. 2, which has since been repealed but which contained language that was largely the same as that in Minn. Stat. § 340A.501.

⁷⁶ *Schuessler v. Benchmark Marketing and Consulting, Inc.*, 500 N.W.2d 529, 536 (Neb. 1993).

Appeals noted in *Bird v. Department of Public Safety*,⁷⁷ the County has a compelling interest in pursuing this matter to completion:

The Minnesota Supreme Court has consistently adhered to a policy of granting to municipalities a broad discretion in matters involving liquor licenses. The policy emanating from the supreme court's decisions reflects a concern for the abuse which could result from the dispensation of liquor. * * * Restrictions imposed on liquor licenses are particularly necessary to protect the safety, health, and morals of the public. The statutes regulating liquor sales are permeated with a recognition that this strict regulation and control is necessary for the public good.⁷⁸

In conclusion, The ALJ therefore recommends that the County Board not stay further proceedings in this matter pending completion of the ongoing criminal proceedings against Mr. Wheeler.

B. H. J.

⁷⁷ 375 N.W.2d 36 (Minn. Ct. App. 1985)

⁷⁸ Id. at 43.